

RSA No. 3894 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 3894 of 2014

Date of Decision: December 11, 2015

Kapoor Chand & others

...Appellants

Versus

Kuldeep Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajinder Goyal, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Kaithal, dated 21.09.2011, whereby, the suit preferred by the appellant-plaintiffs for recovery of possession of land measuring 39 Kanals and 7 Marlas, details of which has been mentioned in the plaint, situated in village Chhot, Tehsil and District Kaithal, stands dismissed, appeal against which preferred by the appellant-plaintiffs has also been dismissed by the District Judge, Kaithal, on 14.03.2014.

It is the contention of the learned counsel for the appellants that an oral exchange had taken place between the predecessors-in-interest of the parties on 15.02.1960 and on the basis of which, 39 Kanals and 7 Marlas of land which is the subject

matter of the suit, was given in exchange by the predecessor-in-interest of the appellant-plaintiffs to the predecessor-in-interest of the respondents. On the basis of the said oral exchange, the respondent-defendants got entered in their favour the mutation qua this 39 Kanals and 7 Marlas of land, whereas, the land of the respondent-defendant which was measuring 94 Kanals and 10 Marlas, situated in the same village, could not be mutated in the name of the appellant-plaintiffs on the ground that the portion of the said land was declared as surplus vide order dated 29.06.1960 (Ex.P-9). He contends that the exchange was not a *bona fide* exchange on the part of the predecessor-in-interest of the respondent-defendants. Further a portion thereof was acquired by the State of Haryana for which also, the compensation was claimed by the respondents. That apart, he contends that land measuring 28 Kanals and 18 Marlas was released by defendant No.1 in favour of his grand-sons which further indicates the exchange has actually not taken place and that the respondents had all through been treating them the owners of the land which was given in exchange to the appellant-plaintiffs. He, thus, contends that all these circumstances clearly depict that the exchange which is sought to be made the basis for claiming possession and ownership over the land in dispute measuring 39 Kanals and 7 Marlas which belongs to the appellant-plaintiffs is without any justification or basis and the suit should have been

decreed as claimed by the appellant-plaintiffs. Prayer has, thus, been made for setting aside the judgments and decree passed by the Courts below and for decreeing their claim.

I have considered the submissions made by the learned counsel for the appellants and with his assistance have gone through the impugned judgments but cannot accept the same.

The respondent-defendants have been able to prove by way of leading cogent and documentary evidence that there has been actual exchange of the land since the year 1960. Even the mutation has been sanctioned in their favour on the basis of the oral exchange which is dated 15.02.1960. As per the mutation No.388 (Ex.P-5) in the remarks column, the fact of oral exchange on 15.02.1960 is recorded and the same was entered by the Patwari and verified by the Kanoongo on 16.05.1960. On the basis of the exchange dated 15.02.1960 which was sought to be mutated by the appellant-plaintiffs in their favour with regard to the land measuring 94 Kanals and 10 Marlas was rejected vide order dated 07.04.1961 by the revenue officers which order has not been challenged by the appellant-plaintiffs till date and has, thus, been accepted by them. The assertions of the counsel for the appellants that it was not a *bona fide* exchange on the part of the respondents as the land was declared surplus, suffice it to say that the order vide which the land was declared as surplus is dated 29.06.1960 (Ex.P-9) which is

subsequent to the order of oral exchange dated 15.02.1960 and the actual possession having been handed over to the respective parties. The said plea, therefore, cannot be accepted.

That apart, as per the findings recorded by the Courts below on the basis of the pleadings and evidence led by the parties, once the oral exchange has been depicted in the revenue records, the denial thereof by the appellant-plaintiffs cannot be accepted when they have themselves moved an application for mutation of the exchanged land in their favour which was rejected and unfortunately, the same has not been challenged by them. The acquisition of the land which is alleged to have been in the name of the respondents and the payment of the compensation amount in their favour again would not indicate that the possession had not been handed over to the appellant-plaintiffs especially when the revenue record clearly depicts that they are still in possession of the remaining land except for the one which was acquired by the Government. In view of the above, the judgments and decree passed by the Courts below cannot be said to be illegal.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is

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there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

December 11, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE